

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF NEW YORK, *et al.*,

Plaintiffs

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1233 (CKK)

**ORDER**

Presently pending before the Court is a motion filed collectively by the plaintiffs in *In re Microsoft Corp.*, MDL No. 1332 (D. Md.) (Hon. J. Frederick Motz) (“MDL proceeding”).

Plaintiffs in the MDL proceeding, who are not parties to the above captioned case, seek leave of the Court to intervene in order to request clarification or modification of the Protective Order in this case. Defendant Microsoft filed a responsive memorandum which, *inter alia*, raises a concern that the MDL plaintiffs are seeking access to “*all* confidential third-party materials” produced in this case. Microsoft Resp. at 2. Microsoft alleges, and at present, the Court has no evidence to the contrary, that the MDL plaintiffs’ motion does not provide notice to potentially interested third-parties and does not afford them an opportunity to be heard on the issues raised in the MDL plaintiffs’ motion. *Id.* In this regard, Microsoft aptly points out that “[t]hird parties that have produced Confidential documents or testimony in the course of the Remedies proceeding have done so in direct reliance on this Court’s Protective Order.” *Id.*

At this stage in the proceeding, it would squander judicial resources to establish a

procedure which effectively requires the potentially interested third-parties to communicate their concerns to the MDL plaintiffs via filings in this Court. To avoid such a situation, the Court will suspend the briefing schedule on the pending motion in order to require the MDL plaintiffs to provide notice to any potentially interested third-parties and engage in discussions with these third-parties in an effort to resolve any disagreement relating to access to third-party documents. If disagreements persist after this period, the MDL plaintiffs shall so notify the Court in their reply memorandum, and thereafter, the Court will afford appropriate third-parties an opportunity to be heard on any outstanding issues.

Accordingly, it is this 26th day of July, 2002, hereby

**ORDERED** that the non-party MDL plaintiffs shall endeavor to contact any third-parties who disclosed Confidential and/or Highly Confidential information in conjunction with the Remedies Phase of the above-captioned case; and it is further

**ORDERED** that the non-party MDL plaintiffs shall engage in discussions with such third-parties in an effort to reach an agreement as to the terms of any disclosure to the MDL plaintiffs of information which is covered by the Protective Order entered in the above-captioned case; and it is further

**ORDERED** that the non-party MDL plaintiffs shall file their reply to Microsoft's response not later than August 30, 2002. Such reply shall include a report on the status of negotiations with any relevant third-parties. Thereafter, if necessary, the Court will establish procedures for addressing any outstanding third-party concerns.

**SO ORDERED.**

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COLLEEN KOLLAR-KOTELLY  
United States District Judge